

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

NEWTON BORIS SCHWARTZ, SR.	§	
	§	
vs.	§	CIVIL ACTION 4:16-cv-00106
	§	
TED CRUZ A/K/A RAFAEL	§	NO JURY
EDWARD CRUZ, INDIVIDUALLY	§	
Defendant	§	

**NOTICE OF APPEAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Newton B. Schwartz, Sr., Party Plaintiff, pro se and files this his Notice of Appeal from the following appealable Final Judgment(s), Orders, including appealable Memorandum Opinion and Order (Rec. Doc. 36 April 13, 2016) of dismissal with prejudice for: (1) lack of ripeness; and (2) lack of standing; and (3) on the merits in the above captioned and numbered cause U.S. District Court, Houston Division. Plaintiff appeals to the U.S. Court of Appeals for the Fifth Circuit from this Court's following Orders in addition to inclusive Rec. Doc. 36 above, including:

1. Granting Defendant's Motion to Dismiss (Rec. Doc. 14) with prejudice and:
  - a. Rec. Doc. 36 Order of Dismissal for lack of subject matter jurisdiction, including Plaintiff's alleged:

- b. Lack of Article III U.S. Constitution standing to contest Defendant Cruz's Presidential eligibility under the U.S. Constitution, Article II, Section I, Clauses 4 and 5<sup>1</sup>; and
  - c. Lack of ripeness as relates to the present current status of Defendant Cruz
2. Striking Plaintiff's:
- a. Rec. Doc. 28 Third Supplemental Memorandum of Law;
  - b. Plaintiff's (Rec. Doc. 29) Fourth Supplemental Memorandum of Law;
  - c. Denial of Motions for leave (Rec. Doc. 31 on April 11, 2016) to Rec. Doc. 29, Supplemental Memorandum of Law and order denying leave to file after the April 9, 2016 ripeness after the Defendant's Wisconsin primary win, affecting both (1) ripeness of Defendant's continuing standing and viability as a purportedly otherwise eligible standing Republican candidate for President of the United States and not rendering this case moot for lack of an Article III, a case or controversy presently ripe for decision and not moot including Plaintiff's above Rec. Docs. 28 and 29 updates in Plaintiff's Third and Fourth amended supplemental Memorandums of Law filed April 8<sup>th</sup> and 11<sup>th</sup>, 2016 respectively.
  - d. Rec. Doc. 34 Striking Rec. Doc. 32, Plaintiff's Fifth Supplemental Memorandum of Law;
  - e. Parties in this Appeal Notice are Newton B. Schwartz, Sr. (Plaintiff) and Ted Cruz a/k/a Rafael Edward Cruz (Defendant). Both are residents and citizens of

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<sup>1</sup> Clauses 4 or 5 are indistinguishable, both are appropriate.

Harris County, Texas. Intervenor(s) is(are) not included as parties in this Notice of Appeal by Plaintiff NBS. Intervenor Terry Wayne Wheelock, eligible presidential write-in candidate here was in this Court, but his Intervention was twice stricken, the latter being on March 8, 2016 (Rec. Doc. 22).

3. This appeal is to the U.S. Court of Appeals for the Fifth Circuit, from Rec. Doc. 36, April 13, 2016:
  - a. Dismissal per Rec. Doc. 14 for lack of Plaintiff's standing under Article III of the U.S. Constitution to contest Defendant's eligibility under Article II, Section I, Clauses 4 and/or 5; and
  - b. The Trial Court's (1) stay of all discovery (Rec. Doc. 27, March 31, 2016), ; and (2) failure to permit any discovery to date to obtain, verify and/or certify admissible relevant evidence proffered per above Rec. Docs. 28 and 29; and (2) discover, obtain, offer and hear, and consider admissible evidence; and (3) to rule on the eligibility of Defendant Cruz per U.S. Constitution Article II, Section I, Clauses 4 and 5<sup>2</sup>; and
  - c. Plaintiff additionally appeals from the Court's above Order of April 11, 2016 (Rec. Doc. 34) Striking Plaintiff's Fifth Memorandum of Law; and from
  - d. Rec. Doc. 31 Order of April 11, 2016; and above order denying Leave to File and striking Plaintiff's Third Memorandum of Law (Rec. Doc. 28, filed April

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<sup>2</sup> See fn. 1 at p. 1

- 1, 2016) and Plaintiff's Fourth Memorandum of Law (Rec. Doc. 29, filed April 8, 2016); and
- e. Court order of April 11, 2016 striking Rec. Doc. 32, Plaintiff's Fifth Memorandum of Law filed April 11, 2016; subject to leave to file it being denied; and
- f. Not reaching and failure to rule upon Defendant's Constitutional eligibility per Article II, Section I, Clauses 4 and 5 in Rec. Doc. 36.

Respectfully submitted,

/s/ Newton B. Schwartz, Sr.

Newton B. Schwartz, Sr., pro se

TBN: 17869000

Fed I.D.: 5080

1911 Southwest Freeway

Houston, Texas 77098

Tel. (713) 630-0708

Fax (713) 630-0789

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above document in accordance of Federal Rules of Civil Procedure CM/ECF System U.S. Certified Mail, Return Receipt Requested and/or U.S. Regular Mail on this 14<sup>th</sup> day of April, 2016.

/s/ Newton B. Schwartz, Sr.  
Newton B. Schwartz, Sr.

Layne E. Kruse  
S. Lee Whitesell  
Norton Rose Fulbright  
1301 McKinney, Suite 5100  
Houston, Texas 77010-3095  
[layne.kruse@nortonrosefulbright.com](mailto:layne.kruse@nortonrosefulbright.com)  
[lee.whitesell@nortonrosefulbright.com](mailto:lee.whitesell@nortonrosefulbright.com)  
Tel: (713) 651-5151  
Fax: (713) 651-5246  
*Attorneys for Ted Cruz*

VIA EMAIL

Terry Wayne Wheelock, pro se  
7704 Terry Drive  
Fort Worth, Texas 76180-6218  
[worldgraphixs@sbcglobal.net](mailto:worldgraphixs@sbcglobal.net)

VIA EMAIL